IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

Criminal Application No.4480 of 2006

Mrs.Mehrunnisa Mohd. Pathan — Applicant
Vs.
State of Maharashtra — Respondent

Mr.Nitin Jamdar for applicant.
Mr.U.V.Nikam, APP for State.

CORAM: B.H.MARLAPALLE,J.

January 19, 2007.

P.C.

1. Heard Mr.Nitin Jamdar, the learned counsel for the applicant who is one of the accused in Special Case No.42 of 2006 pending before the Special Judge at Nashik under the NDPS Act and more particularly for the offences punishable under Sections 22(c) and 23(c) of the said Act. The other accused is Mohd. Pathan, the husband of the applicant.

2. On information having been received and recorded in the police diary the Senior Police Inspector of Bhadrakali Police Station raised the house of the applicant on 19/6/2005 at about 5 p.m. and in the terrace rooms found Ganja contraband. It weighed 1035 Kgs. and valued at about Rs.10,35,000/-. The same was seized in the presence

of the witnesses and seizure panchanama was drawn. The applicant along with her husband came to be arrested and both of them applied for bail by filing the applications at Exhibits 3 and 5. By common order dated 8/11/2006, the learned Ad-hoc Addl. Sessions Judge at Nashik was pleased to reject both the applications.

3. In her application the present applicant had stated that she was not residing in her house which was raided, from 20th March 2006 onwards she was on the other hand staying with her son for medical treatment, she was not present at the time of the raid in the house, the raided terrace rooms were not in her possession and in fact were rented out to one Sachinkumar Chaudhari. The applicant is sick and old woman and had no concern with the alleged contraband found in her house. She further stated that though the house is in her name, she was not residing therein from March 2006 onwards and on the day the raid was carried out she was not one of the occupants.

4. Affidavit-in-reply filed by the Police Inspector attached to Bhadrakali Police Station,

Nashik City states that the raiding party went to House No.3650 situated at Bagwanpura, Kathada, Nashik city. The house was locked and, therefore, the lock was broken by drawing a panchanama and when the house was searched, the abovestated quantity of contraband was found and was seized on 19/6/2006. The husband and wife were both missing / absconding and the police team had tried its level best to trace out both the accused by visiting village Dindori where the applicants owned a farm house along with agricultural land. The police team also had visited the house of the applicants' daughter-in-law at Devlali Camp. The applicant along with her husband surrendered before the learned Judicial Magistrate First Class, Dindori in C.R.No.3037 of 2006 on 2/8/2006 for the offences punishable under Sections 22 and 27 of the NDPS Act registered with the Dindori Police Station, Nashik Rural. They were granted police custody till 13/8/2006 and thereafter judicial custody until 7/11/2006. On completion of investigation charge-sheet has been filed and both the accused are in jail as at present.

5. The learned Ad-hoc Addl. Sessions Judge after hearing the learned counsel for the applicants as

well as the Public Prosecutor noted that police papers, prima facie, indicated that the raid at the residence of the accused was carried and 1035 Kgs. Ganja worth Rs.10,35,000/- was seized from the accused. The defence taken by the accused that the house was let out at the relevant time is an issue which is required to be decided in the trial of the Special Case and the fact that when the raid was carried out none was residing in the house indicated that only the house owners were residents. The wife during the course of arguments and as was the case before the Sessions Court, tried to claim that she was absent and at the most her husband may be involved and in any case she was not residing in the house from March 2006. This cannot be accepted unless the applicant proves the same by leading evidence. The benefit of being released on bail for an offence under the NDPS Act can be granted only when there are reasonable grounds to believe that the applicant is not guilty of the offence charged and that she is not likely to commit any offence while on bail. These are the limitations put on the powers of the Court while considering an application for bail, in addition to the limitations under Section 439 of Cr.P.C.

6. As noted earlier, whether the applicant is not residing in her house from March 2006 onwards is an issue which will have to be gone into by taking into consideration the evidence that may be adduced during the trial of the Special Case. There is no dispute as of now, that there was no third member of the family who occupied the house. The wife's plea that she is ignorant of the activities of her husband cannot be accepted for releasing her on bail by holding that she is not guilty of such offence, prima facie, at this stage and, therefore, the reasoning set out by the learned Ad-hoc Addl. Sessions Judge in rejecting the applicant's bail application cannot be faulted with.

7. The application is, therefore, rejected.

Trial expedited.

(B.H